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January 24, 2006

HAND DELIVER

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: The Berkshire Gas Company - D.T.E. 05-58

Dear Secretary Cottrell:

Enclosed please find a copy of the Initial Brief of The Berkshire Gas Company for filing in the above-referenced proceeding. This brief is also being submitted electronically.

Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: James M. Avery
James M. Avery

JMA/cdw
Enclosure
cc: John J. Keene, Jr., Esq., Hearing Officer (w/enc via hand delivery)
Jack Warchol, Economist, Gas Division (w/enc via hand delivery)
Rebecca S. Hanson, Assistant General Counsel (w/enc via hand delivery)
Andreas Thanos, Assistant Director, Gas Division (w/enc via hand delivery)
Colleen McConnell, Esq., Assistant Attorney General (w/enc via hand delivery)
Mr. Dodson Skipworth - Tennessee Gas Pipeline (w/enc)
Mr. Jay V. Allen - Tennessee Gas Pipeline (w/enc)
Karen L. Zink, President, COO and Treasurer (w/enc)

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The Berkshire Gas Company	)	D.T.E. 05-58

INITIAL BRIEF OF THE BERKSHIRE GAS COMPANY

I. INTRODUCTION

On August 26, 2005, The Berkshire Gas Company ("Berkshire" or the "Company") filed a Petition for Approval of Gas Transportation Agreement Between The Berkshire Gas Company and Tennessee Gas Pipeline Company with the Department of Telecommunications and Energy (the "Department"). Berkshire's Petition sought approval to execute a Gas Transportation Agreement in the form provided as Exhibit A to the Precedent Agreement between Berkshire and the Tennessee Gas Pipeline Company ("Tennessee") entered into as of January 21, 2005 (the "Transportation Agreement"). Exh. KLZ-1. The Transportation Agreement describes the terms and conditions pursuant to which Tennessee agreed to provide natural gas transportation service to Berkshire. The Company submitted the prepared testimony and schedules of Karen L. Zink, President, COO and Treasurer in support of the Petition. Exh. BG-1. Finally, the Company filed a Motion for Protective Treatment of Confidential Information for a portion of the Transportation Agreement as well as materials relating to the competitive solicitation that resulted in the execution of the Transportation Agreement.

Pursuant to its duly published notice, the Department conducted a public hearing at its offices on October 24, 2005. On October 17, 2005 the Attorney General of the Commonwealth (the "Attorney General") filed notice of intervention as of right pursuant to G.L. c. 12, §11E. The Department also allowed the petition of Tennessee to participate in this proceeding as limited participants. The Department conducted an evidentiary hearing on January 9, 2006.

At the evidentiary hearing, the Company presented the testimony of Ms. Zink wherein she adopted the prepared testimony submitted with the Petition and addressed questions from the Department staff and the Attorney General. In addition to the sworn testimony accepted at the hearing, the evidentiary record consists of approximately 56 exhibits, including the Company's initial filing and supporting documentation as well as the Company's responses to the Information Requests of the Department staff and the Attorney General. The Company also responded to four record requests issued during the evidentiary hearing by the Department staff and the Attorney General. This evidentiary record demonstrates that the Transportation Agreement is consistent with the public interest in that the Tennessee transportation resource proposed to be added to the resource portfolio is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers. In addition, the record demonstrates that the Company's proposal to assign a pro rata share of capacity under the Transportation Agreement pursuant to Section 13 of the Company's Terms and Conditions is appropriate and consistent with Department requirements. Exh. BG-1, p. 13.

The Hearing Officer required that Initial Briefs in this proceeding be filed by January 24, 2006 and that reply briefs be submitted by January 31, 2006. The Company's Initial Brief is submitted in accordance with the procedural schedule established by the Hearing Officer.

II. DESCRIPTION OF THE TRANSPORTATION AGREEMENT AND RELATED SOLICITATION PROCESS.

The Transportation Agreement between the Company and Tennessee was executed following an "open season" bidding process conducted by Tennessee in connection with its Northeast ConneXion Project New England ("ConneXion Project"). The Transportation Agreement includes the terms pursuant to which Tennessee will provide firm transportation service up to a maximum daily transportation quantity ("MDTQ") of 4,000 dekatherms per day ("Dth/d") for a primary term of twenty (20) years subject to Berkshire's right to decrease the MDTQ in whole or in part effective on May 1 of the twelfth year following the in-service date (or on any subsequent May 1 thereafter). Exh. BG-1, p. 5; Exh. KLZ-1, Exhibit B, p. 22. The primary receipt points will be located in the producing regions near the Gulf of Mexico in Tennessee Zone 0. The primary delivery point will be the interconnection of the Company's system with the Tennessee pipeline at Stockbridge, Massachusetts or meter #020278. Exh. DTE 1-3; Exh. BG-1, p. 6. Service will be provided at a fixed, negotiated rate for the term of the Transportation Agreement. Exh. BG-1, p. 5; Exh. KLZ-1, Exhibit B. p. 21. Service will commence on the later of November 1, 2007 or the in-service date for the facility upgrades necessary for Tennessee to provide the service described as part of the ConneXion Project. Exh. BG-1, p. 5. The service pursuant to Tennessee's ConneXion Project will be made available by adding compression facilities in New York and Massachusetts to existing pipeline facilities. Id. at 3. The ConneXion Project is expected to be available as soon as the 2007-2008 heating season. Id.

Ms. Zink explained that the service to be provided pursuant to the Transportation Agreement will provide Berkshire with a least-cost option for Berkshire transporting gas supplies to the Company's service territory during peak and non-peak periods, in large measure because necessary construction is limited to compression facilities. Exh. BG-1, p. 5; Tr. 44-5. Thus, this capacity was a least-cost resource that would also involve limited environmental impact, an opportunity that will not likely be available in the future. Exh. BG-1, p. 4; Tr. 18, 45. Ms. Zink also explained that the Transportation Agreement also provides reliability and diversity benefits. Exh. BG-1, pp. 12-13; Tr. 65.

In October 2004, Tennessee announced a second binding open season for its proposed ConneXion Project, subject to several rights of subscribers to terminate. Exh. BG-1, p. 10; Tr. 14.[1] This open season was part of a continuing solicitation of interest by Tennessee that had commenced several months earlier. The ConneXion Project was initially designed to increase the capacity on Tennessee's system to the New England region by 100,000 Dth/d but was subsequently increased to 136,300 Dth/d due to customer demand during the open season. Tennessee plans to install additional compression along the mainline in New York and Massachusetts to provide the ConneXion Project's service. Berkshire followed these developments as part of its ongoing monitoring of the natural gas market.

[1] Tennessee conducted an initial open season for this project that did not include the same termination flexibility. Berkshire declined to participate in the ConneXion Project at that time because it did not require additional capacity resources. Tr. 11-12.

Again, Berkshire had initially elected not to participate in the ConneXion Project when the initial open season was conducted because it did not need additional transportation capacity at that time. Subsequently, Berkshire became aware that an important, least-cost peaking resource that Berkshire's customers had enjoyed for many years, would no longer be available. That is, certain peak season peaking rights pursuant to an Amended Fuel Purchase Agreement ("AFPA"; Exh. AG 1-3) between Berkshire and the operator of a cogeneration plant located in Pittsfield, Massachusetts would no longer available. Exh. BG-1, pp. 7-8; Tr. 12-13. Due to circumstances in the electricity market beyond the control of the Company, it became clear to Berkshire that the plant would not be operated and Berkshire determined that it could not rely upon this resource. Tr. 12-13; Exh. AG 1-6. The AFPA had entitled Berkshire to purchase up to 7,500 Dth/d per day of the plant's gas supply without any demand charges and had secured tens of millions of dollars of savings for the benefit of customers. Tr. 12; Exh. AG 1-3.

When Berkshire became aware of this situation in the fall of 2004, Berkshire first aggressively pursued shorter term alternatives in order to replace this resource for the winter 2004/2005 and then began evaluating longer term alternatives to replace this important resource. Berkshire took several immediate actions. Exh. BG-1, pp. 7-9; Tr. 13-14. First, Berkshire changed its operating practices with respect to its liquid propane plants employed for peaking services and expanded its contractual propane purchasing rights. The Company also evaluated a number of other short-term options before electing to procure additional liquefied natural gas purchase rights. The Department was advised of these actions in a report by the Company and such measures were described in detail in the Company's Forecast and Supply Plan filed in 2005 and under review in D.T.E. 05-7. Exh. AG 1-6; Tr. 38.

Once arrangements were in place for that impending heating season, the Company continued to evaluate alternatives for the longer term. Berkshire was aware in late 2004 that Tennessee was reoffering ConneXion Project capacity with limited rights for Berkshire to terminate its commitment. While Berkshire recognized the obvious value of the ConneXion Project, these limited termination rights would enable Berkshire to analyze such resource and ensure that such an approach was the best available alternative to meet its now existing resource need particularly since the ConneXion Project provided a year-round opportunity. Tr. 14-15; Exh. BG-1, p. 10; Exh. DTE 2-4. Given the benefits of the ConneXion Project and Berkshire's then current need for a replacement resource, Berkshire agreed to a commitment for its MDTQ of 4,000 Dth/d and, accordingly, on January 21, 2005 Berkshire and Tennessee executed the Precedent Agreement. Exh. BG-1, p. 10.[2] As noted, prior to the in-service date, the Precedent Agreement will be replaced by an agreement in the form of the Transportation Agreement.

The Company next performed a comprehensive evaluation of alternative resources. First, on February 4, 2005, Berkshire solicited interest from a number of parties with respect to providing up to a 35-day service since the AFPA primarily provided benefits during peak periods. Exh. KLZ-2; Exh. DTE 1-14. After receiving some indications of interest, Berkshire determined that it would be appropriate to consider more seasonal service that could meet peak requirements but that might also secure other benefits. Therefore, on February 22, 2005 a follow-up solicitation of interest in providing a 90-day or 151-day service was sent to these same parties. Exh. KLZ-3; Exh. DTE 1-15; Exh. DTE 1-16. Subsequently, on March 7, 2005 a formal request for proposal ("RFP") was issued to the seven parties that had expressed an interest in the Company's earlier solicitations of interest. Exh. KLZ-5. Four responses to the RFP were received with a total of 11 specific proposals. Exh. KLZ-6.

In evaluating the available opportunities, the Company recognized that the ConneXion Project was likely to be, by far, the best pipeline alternative given the Company's geographic location. Tr. 18-19; Exh. BG-1, pp. 11-12. The Company recognized that costs associated with the ConneXion Project could be offset by releasing this valuable capacity resource when not required, a factor reflected in Berkshire's cost analyses. Accordingly, the Company determined that it would be appropriate to compare the services pursuant to the Transportation Agreement to the proposals received pursuant to the RFP. The Company eventually determined that the Transportation Agreement was the least-cost resource on both a per-unit and total seasonal cost basis. DTE-RR-1;

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[2] Berkshire elected to take only 4,000 Dth/d due to delivery constraints at its meter stations. Exh. BG-1, p. 6; Exh. DTE 1-3. Berkshire recognized that additional peaking resources would be required and that it would be appropriate to test the market to consider all potential resource alternatives. Berkshire expects to file a petition seeking approval of a contract with Coral Energy Resources L.P. in the near term as part of the Company's strategy to replace the AFPA. Exh. AG 1-12.

DTE-RR-3. The Company also considered several non-price factors in electing to pursue the Transportation Agreement. Exh. BG-1, pp. 12-13. First, the Transportation Agreement provides for primary firm delivery that will enhance the overall reliability of the Company's resource portfolio. Id.; see also Exh. DTE 2-13. Second, the ability to reduce the MDTQ provides flexibility in the event some more attractive resource becomes available in the future. Exh. DTE 1-13. Third, the Transportation Agreement will provide greater balance in terms of the Company's ability to take delivery between Zone 0 and Zone 1 on the Tennessee system. Exh. DTE 2-13. Fourth, the term of the Transportation Agreement expires on a different date from other Berkshire transportation commitments providing a stability and diversity benefit to the Company. Accordingly, the Company elected not to exercise its termination rights under the Precedent Agreement and prepared this petition to the Department to secure authority to execute the Transportation Agreement.[3]

III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of natural gas resources, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a company must show that the acquisition: (1) is consistent with the company's portfolio objectives; and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract renegotiations. Id.

In establishing that a resource is consistent with a company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, §94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current

[3] The Company may terminate the Transportation Agreement by March 1, 2006 should Department approval not be secured. Exh. KLZ-1, p. 6. Accordingly, the Company respectfully requests that the Department consider this deadline in reviewing the Petition. The Company also continued to analyze other replacement resources under price and non price factors and expects to file a separate petition with respect to an additional replacement resource with the Department in the near term. Cf. Exh. AG 1-12; Tr. 19.

market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the company at the time of the acquisition, as well as with those opportunities that were available to other companies in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDCs' non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

IV. DISCUSSION

A. Resource Evaluation and Selection Process

In late 2004, Berkshire recognized the need to develop and implement an appropriate process for securing adequate long-term replacement resources due to the loss of availability of the capacity available pursuant to the AFPA. Berkshire evaluated all available resource options. Exh. BG-1, pp. 11-12 Tr. 13-14. Berkshire considered the updated open season for the ConneXion Project and recognized that this option was the optimal resource for adding primary firm transportation capacity because of the cost and non-cost benefits and limited opportunities for similar resources as a result of Berkshire's geographic location. Tr. 18. The Company also recognized that a firm transportation resource could effectively be employed to meet the Company's resource need that related primarily to peak demand periods. Berkshire next determined that it would be appropriate to compare this resource to alternatives that might be developed pursuant to a competitive solicitation. Tr. 14-16; Exh. BG-1, pp. 4-5. Accordingly, the Company issued two solicitations of interest and then a more formal RFP.

The Company's solicitations of interest were issued to ten parties that included suppliers and other local distribution companies. Exh. KLZ-2. The RFP was eventually issued to seven parties that expressed interest and four parties submitted a total of 11 proposals. Proposals were received from gas suppliers and a liquefied natural gas service provider. Exh. KLZ-6.[4] The

[4] Specific proposals were received from Amerada Hess Corporation, Sprague Energy Corp., Distrigas of Massachusetts LLC and Coral Energy Resources L.P. Exh. KLZ-6.

Company evaluated these proposals pursuant to an analysis of price and non-price terms, including the consideration of factors such as reliability, flexibility, diversity and stability. DTE-RR-1; DTE-RR-3; Exh. DTE 2-11; Exh. DTE 2-13; Exh. BG-1, pp. 12-13.

The Company's analysis determined that the ConneXion Project was the optimal resource for addressing at least part of the Company's identified resource need. This determination was based upon a comprehensive cost analysis considering both per-unit and total seasonal costs. DTE-RR-1; DTE-RR-3. A more favorable pricing structure was also available. DTE-RR-3. The ConneXion Project had several non-price benefits primarily because alternative bids were less reliable due to the need to rely upon secondary transportation rights and less flexible (e.g., one proposal was limited to a 20-day call structure). DTE-RR-3. Accordingly, the Company elected not to exercise its termination rights pursuant to the Precedent Agreement and to seek Department approval for the Transportation Agreement.

The Company demonstrated that the resource evaluation and RFP processes were fair, open and transparent. Moreover, the Company demonstrated that the RFP portion of its resource review process was similar to the process approved in recent proceedings. See, e.g., The Berkshire Gas Company, D.T.E. 04-47, pp. 2-4 (2004); The Berkshire Gas Company, D.T.E. 02-81, pp. 3-4 (2003); The Berkshire Gas Company, D.T.E. 02-56,pp. 6-9 (2002); The Berkshire Gas Company, D.T.E. 02-19, p. 11 (2002); The Berkshire Gas Company, D.T.E. 01-41, p. 14 (2001); The Berkshire Gas Company, D.T.E. 99-81, pp. 3-5 (1999). The bidding and evaluation process and the fact that the Company might elect not to select any of the bids received pursuant to the RFP was clearly described to each bidder. Exh. KLZ-5, p. 7. A wide range of potential bidders was solicited with respect to their interest in receiving the RFP. Potential bidders were afforded the opportunity to ask questions with respect to the solicitation and no questions were received. Exh. KLZ-5, p. 5; Exh. DTE 2-1. Bids in response to the RFP were evaluated based upon appropriate criteria that included price and non-price factors. Exh. DTE 2-5. The bids received in response to the RFP were also compared to the ConneXion Project pursuant to appropriate price and non-price criteria. No bidder objected to the process or asserted that it was unfairly excluded from consideration or that its bid was unfairly evaluated. Exh. DTE 2-5. Bidders were aware that the Company was considering a wide range of potential alternatives and the benefits available pursuant to a year round resource were not a precluding factor. Exh. DTE 2-3. In terms of price, the ConneXion Project was the least-cost alternative on both a per unit and seasonal basis. DTE-RR-1; DTE-RR-3. The Company also appropriately considered the non-price benefits and the advantages of selecting the ConneXion Project. In sum, Berkshire ultimately demonstrated that the Transportation Agreement compared favorably to the options available for the Company and its customers. Accordingly, the Department should find that resource selection process that included the RFP process was open, fair and transparent and approve the Company's resource selection process as appropriately conducted. Exh. DTE 2-5.

B. <u>Transportation Agreement</u>

Berkshire demonstrated that the Transportation Agreement is in the public interest because it contributes to a least-cost resource portfolio consistent with Berkshire's portfolio objectives, including the need to provide reliable service during peak periods. First, Berkshire demonstrated that securing a replacement source for the AFPA will enable the Company to continue to provide reliability benefits to its customers pursuant to a least-cost and more diversified resource portfolio. Berkshire's most recent Forecast and Supply Plan submitted to the Department in docket D.T.E. 05-7 reflected the need to address the loss of the AFPA resource in order to maintain reliable service. Exh. BG-1, p. 6; Exh. DTE 2-15. These concerns were reiterated in this proceeding. Tr. 43-44; Exh. DTE 2-15. The Transportation Agreement contributes to the Company's ability to satisfy its various planning standards including the peak day and design winter. In addition, by securing an additional gas transportation resources from Zone 0, Berkshire explained that it expects to enhance cost, diversity and stability attributes of its resource portfolio. The transportation agreement is not only the least-cost resource but includes terms that enable the Company to ratchet down its MDTQ. Exh. DTE 1-13. Finally, Berkshire explained that the term of the Transportation Agreement together with its ability to elect to reduce all or a portion of its MDTQ is generally consistent with its obligations during the transition period identified by the Department in D.T.E. 98-32 and reaffirmed in D.T.E. 04-1. Id. at 17;

see also Gas Unbundling, D.T.E. 04-1 (2005) at pp. 52-53 (The Department affirmed that the upstream capacity market for New England is not yet workably competitive and directed gas companies to continue to plan for and procure upstream pipeline capacity in order to serve firm customers.).

The Company's analysis demonstrates that the Transportation Agreement contributes to a reliable, least-cost resource portfolio and is consistent with the Company's portfolio objectives. Therefore, the Company submits that the Department should find that the Transportation Agreement is consistent with the Company's portfolio objectives as set forth in Commonwealth Gas Company, D.P.U. 94-174-A (1996).

V. CONCLUSION

Berkshire has demonstrated that the execution of the Transportation Agreement is consistent with the public interest in that the Tennessee transportation resource is consistent with Berkshire's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers. Accordingly, the Department should approve the Transportation Agreement and take such other action as may be necessary and appropriate.

Respectfully submitted,
THE BERKSHIRE GAS COMPANY
By its attorneys,

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Dated: January 24, 2006

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